



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 547

IN THE MATTER OF CHARLES F. FLAHERTY, JR.

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Charles F. Flaherty, Jr. ("Flaherty") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On February 14, 1996, the United States Attorney's Office and Flaherty brought to the Commission's attention information indicating that he had violated the conflict of interest law, G.L. c. 268A, and the financial disclosure law, G.L. c. 268B.^{1/} The Commission has reviewed the facts, and on March 22, 1996, voted to find reasonable cause to believe that Flaherty violated G.L. c. 268A, §3(b) and §23 and G. L. c. 268B, §6.

The Commission and Flaherty now agree to the following findings of fact and conclusions of law:

I. Introduction

1. Flaherty has served in the House of Representatives ("House") of the Massachusetts State Legislature ("Legislature") from January 1965 to the present. During that time, Flaherty served as the chairman of the Committee on Counties (1971-1982); chairman of the Committee on Taxation (1983); and Majority Leader (1985-1990). In 1991, Flaherty was elected Speaker of the House and he is currently serving his third term in that office.

2. As a state representative and as Speaker, Flaherty participates, by speech and debate, by voting and by other means, in the process by which laws are enacted in the Commonwealth. As Speaker, Flaherty presides over the House, manages and administers the business organization of the House and recommends to the Democratic caucus for their ratification all majority party leadership and committee assignments. Thus, as Speaker, Flaherty has and exercises considerable influence and control over the House, both as to legislative and administrative matters.

3. On November 16, 1988, Flaherty violated G.L. c. 268A, §3(b) by accepting five free skybox tickets to a Boston Celtics game from a lobbyist and an officer of Ackerley Communications of Massachusetts, Inc. ("Ackerley"), a billboard company with business interests before the Legislature.

4. On December 10, 1990, Flaherty signed a Disposition Agreement with the Commission admitting that his receipt of the Celtics tickets from Ackerley violated G.L. c. 268A, §3(b).^{2/} The 1990 Disposition Agreement included a promise by Flaherty that he would refrain from any further conduct in violation of G.L. c. 268A, §3(b). During the period here relevant, Flaherty was aware that his receipt of gratuities, of the type and under the circumstances described herein below, would violate G.L. c. 268A, §3(b).

5. From July 1990 to August 1992, notwithstanding Flaherty's knowledge of the conflict law and despite the 1990 Disposition Agreement, Flaherty accepted and received gratuities from lobbyists, lobbying groups and individuals with business interests before the Legislature, including the use of vacation homes on 13 separate

occasions (totaling more than 62 days) for himself and his guests,^{3/} with a total value of approximately \$13,175, as described herein below.

II. The Newport Condominium

6. In 1991-1992, Abraham Gosman ("Gosman") was a controlling shareholder, a member of the board of directors and chief executive officer of the Mediplex Group, Inc. ("Mediplex"), a company that operates nursing homes and other medical treatment facilities in Massachusetts and elsewhere. Mediplex's business is regulated by the Commonwealth of Massachusetts, and Mediplex was subject to the acts of the Legislature, at the times here relevant.

7. During the period here relevant, Gosman was also involved in real estate development projects in Massachusetts. During 1992, Gosman attempted to purchase and renovate the former Sears Building in the Fenway area of Boston. Gosman planned to convert the Sears Building into a multi-use medical building and rent space to nearby hospitals. The Sears Building project had an estimated cost of more than \$120 million. Gosman withdrew from the Sears Building project in late 1992 and it was not completed.

8. As part of the Sears Building project, Gosman sought a variety of favorable actions from federal, state and municipal agencies. Gosman needed approvals and permits from Boston, state and federal agencies for issues relating to the environment, regulation of health care facilities, transportation, zoning and taxes. Gosman also considered financing the project with bonds issued by the Massachusetts Industrial Finance Agency. In addition, in 1992, legislation pending before the House ("The Rivers Bill") would have regulated development near rivers and streams, and would have potentially affected the Sears Building Project. The Rivers Bill was never enacted.

9. During the period 1991-1992, the Legislature considered a variety of bills that affected Gosman's business interests. On a continuing basis, the Legislature acted on general legislation that affected the rates, taxes, worker's compensation obligations and insurance eligibility of health care facilities in the Commonwealth, including but not limited to Mediplex's facilities.

10. Robert Cataldo ("Cataldo") has been associated with Gosman's business interests from approximately 1985 to the present. Although he was not a registered legislative agent in Massachusetts, Cataldo contacted public officials, including Massachusetts legislators, on behalf of Gosman's business interests. In 1992, Gosman asked Cataldo to participate in the leasing and permitting for the Sears Building project. Beginning in 1993, Cataldo became a member of the board of directors of Mediplex.

11. During the period here relevant, Gosman owned a luxury, top floor, five bedroom condominium in Newport, Rhode Island. Gosman from time to time allowed some of his family members, employees and friends to use the Newport condominium without charge.

12. In or about April, 1991, Cataldo offered Flaherty use of Gosman's Newport condominium. In or about April 1991, Cataldo informed Gosman that he had invited Flaherty to stay at the Newport condominium.

13. Flaherty and his personal guests used the Newport condominium a total of five times, on the following dates:

- a. April 12-14, 1991;
- b. July 8-9, 1991;
- c. December 8-9, 1991;
- d. February 22-23, 1992; and
- e. July 18-26, 1992.

14. Neither Gosman nor Cataldo was present when Flaherty used the Newport condominium. The only people present at the Newport condominium were Flaherty and his guests.

15. When Flaherty used the Newport condominium, he knew it was owned by Gosman and knew that Cataldo was then involved in promoting Gosman's various business interests, which interests involved state legislation and/or regulatory matters as to which legislators had influence.

16. The value of Flaherty's and his guests' use of the Newport condominium was approximately \$7,000. Flaherty did not pay anything for the use of the Newport condominium.

III. The Cotuit House

17. During the period here relevant, Richard Goldberg ("Goldberg") was one of four partners in the Bremen Company, Ltd. ("Bremen Ltd."). Bremen Ltd. and a related trust owned and operated a parking lot in East Boston known as Park & Fly. Park & Fly was an off-airport parking facility used by travelers at Logan who were parking their cars for one or more days. Goldberg also operated the Goldberg Family Limited Partnership d/b/a Logan Communications ("Logan Communications"), which Goldberg and his family owned and controlled. Logan Communications owned billboards on property near Bremen Ltd.'s parking lot and leased the billboards to advertisers. The business activities of both Bremen Ltd. and Logan Communications were subject to state regulation and affected by the acts of the Legislature.

18. During the 1980's, the Commonwealth began planning to construct a traffic tunnel from Boston, under Boston Harbor, to East Boston. This construction project was known as the Central Artery-Third Harbor Tunnel Project. By the late 1980's, the Commonwealth had indicated that it intended to take all or part of Bremen Ltd.'s parking lot and Logan Communication's billboards by eminent domain as part of the construction of the Central Artery-Third Harbor Tunnel. Goldberg organized his partners' opposition to these eminent domain takings, and, by May 1990, they had retained John E. Murphy ("Murphy"),^{4/} who was known to have close ties to Flaherty, to lobby the Legislature on behalf of Bremen Ltd. and Logan Communications. Murphy and Goldberg lobbied the Legislature in the Spring of 1990 to amend a revenue bill with a provision that would have prohibited the Commonwealth from taking Logan Communications' and Bremen Ltd.'s property by eminent domain. The Legislature approved the bill with the amendment sought by Goldberg and Murphy as House Bill No. 5858.

19. In July 1990, Governor Dukakis vetoed the amendment to House Bill No. 5858. In his veto message on July 18, 1990, the Governor indicated that another solution to the issue of the taking of Logan Communications' and Bremen Ltd.'s land should be sought.

20. In late July 1990, Murphy signed a lease to rent a large and luxurious vacation house in Cotuit, Massachusetts ("Cotuit house") for the period of August 1, 1990 to September 4, 1990. Murphy and Goldberg shared the \$11,645 cost of this vacation home. Murphy paid \$2,000 rent plus \$645 for the use of the telephone. Goldberg paid \$9,000 rent.

21. In August and early September 1990, Murphy and Goldberg made the Cotuit house available for use by Flaherty, Flaherty's guests and others.

22. Flaherty stayed at the Cotuit house four out of the five weekends of the rental period, plus many weekdays. Murphy and Goldberg and their guests also used the house. In all, Flaherty stayed at the Cotuit house a total of approximately 21-25 calendar days,^{5/} a benefit worth at least \$2,775 for which Flaherty paid nothing.

23. During the time that he was staying at the Cotuit house, Flaherty knew that: (a) Goldberg was seeking legislative action to help Bremen Ltd. and Logan Communications resist the eminent domain takings; (b) Murphy was lobbying the Legislature on behalf of Goldberg and several other clients; and (c) Murphy and Goldberg were paying for the Cotuit house, although, according to Flaherty, he did not know that Goldberg was paying more than Murphy.

24. During 1990-1992, Murphy lobbied the Legislature on behalf of such clients as racetracks, solid waste incinerators, hospitals, a billboard company, an electric utility, and an entity seeking compensation for an eminent domain taking.^{6/}

IV. The Kennebunkport Holidays

25. The Associated Industries of Massachusetts ("AIM") is an association of over 3,000 Massachusetts businesses. One of the purposes of AIM is to lobby the Legislature on behalf of the interests of its members and of the business community at large. During 1990-1992, AIM lobbied the Legislature on numerous bills, including

environmental/packaging legislation, reform of the Worker's Compensation System, and taxation.

26. During the period here relevant, Mark Doran ("Doran") was an employee of and a lobbyist for AIM. In the years 1991 and 1992, Doran also had private clients for whom he lobbied.

27. The Choate Group is a private business retained by other entities and businesses to lobby the Legislature. During 1990-1992, the Choate Group lobbied the Legislature on behalf of various business clients.

28. During 1990-1992, Edward E. O'Sullivan ("O'Sullivan") was an employee of and a lobbyist for the Choate Group. O'Sullivan was also the Choate Group's vice-president.

29. During 1990, 1991 and 1992, Doran and O'Sullivan organized multiple day July 4th holiday events for Flaherty and others in Kennebunkport, Maine, where Doran's in-laws had a house. AIM and the Choate Group paid a substantial portion of the expenses of these holidays.

30. Approximately 18 to 25 people attended each of these July 4th holiday events at Kennebunkport. The majority of these people knew each other and were close friends of Flaherty, including Massachusetts lobbyists and legislators. Doran had his friends and family members present.

31. The funds from the Choate Group, AIM and Doran were used to pay for boat rentals, clambakes and other meals, entertainment, and hotel rooms for some of the guests.

32. Flaherty was aware that AIM and the Choate Group had interests in legislation. Flaherty was also aware that AIM and the Choate Group, respectively, employed Doran and O'Sullivan as lobbyists and gave them expense accounts which, among other things, were used to entertain legislators. Although neither Doran nor O'Sullivan informed Flaherty that any lobbying entity subsidized the event, Flaherty nevertheless accepted benefits from Doran and O'Sullivan, did not determine the amounts paid by AIM and the Choate Group, and did not pay his proportionate share, thus accepting a benefit of approximately \$2,000.²⁷

V. The Mashpee House

33. Doran also arranged for Flaherty to spend two weekends during 1991 at a vacation home in Mashpee, Massachusetts, owned by a friend of Doran's. The first time Flaherty stayed at the Mashpee house was during Memorial Day weekend, from May 23, 1991 to May 27, 1991. Flaherty invited three friends to accompany him on this visit. The second time that Flaherty stayed at the Mashpee house was with Doran and his wife from June 21, 1991 to June 23, 1991. Flaherty invited a guest. The value of these two visits to Mashpee was approximately \$700. Flaherty knew on each of these occasions that Doran had made the arrangements. Flaherty did not pay anything for these two weekend stays in Mashpee.

VI. The Martha's Vineyard Townhouse

34. From 1974 to 1994, Jay Cashman ("Cashman") was a 50% owner of a construction business in Massachusetts known as JM Cashman, Inc. From 1985 to 1994, JM Cashman, Inc. had over \$100 million in contracts with the Commonwealth. Among such projects, the company repaired bridges and waterfront facilities, and participated in some of the largest construction projects in Massachusetts, including the Third Harbor Tunnel and Massachusetts Water Resource Authority Treatment Plant at Deer Island.

35. J.M. Cashman, Inc. is also a member of a construction industry group known as the Construction Industries of Massachusetts ("CIM"). Among its activities, CIM lobbies the Massachusetts Legislature on behalf of the interests of the construction industry. Cashman has held various offices in CIM, including serving as its chairman in 1993-1994, its vice-chairman in 1992-1993, and as a board member from 1986-1992.

36. On an annual basis, the Legislature must vote to authorize the Commonwealth to issue bonds to finance construction projects. During the period here relevant, Cashman lobbied Flaherty several times on behalf of CIM to secure passage of bonding authorization for construction projects. Jay Cashman and another CIM member also met with Flaherty to discuss CIM's position on an initiative petition which sought to repeal a constitutional amendment Flaherty had previously sponsored.

37. At the time here relevant, Edward Carroll (“Carroll”) was a friend of the Cashman family.

38. Cashman and other members of his family controlled a limited partnership that owned a two-bedroom townhouse condominium on Martha’s Vineyard in an area known as Tashmoo Woods.

39. In 1991, Carroll arranged for Flaherty to use the Cashman vacation townhouse on two occasions: March 22-24, 1991 and July 30, 1992 to August 2, 1992. Flaherty brought personal guests to the Cashman townhouse on both occasions and no member of the Cashman family was present during either visit.

40. When Flaherty used the Martha’s Vineyard townhouse, he knew it was Cashman’s and knew of Cashman’s interest in legislation. It was also Flaherty’s understanding that Cashman had approved Flaherty’s use of the Martha’s Vineyard townhouse.

41. The total value of Flaherty’s use of the Cashman townhouse was \$700. Flaherty did not pay Cashman anything for the use of the Cashman townhouse.

VII. The Conflict of Interest Law

42. Section 3(b) of G.L. c. 268A, the conflict of interest law, prohibits a state employee from, directly or indirectly, receiving anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him.

43. Massachusetts legislators are state employees.

44. Anything worth \$50 or more is of substantial value for G.L. c. 268A, §3 purposes.^{8/}

A. The Newport Condominium

45. By, in 1991 and 1992, accepting the use of the Gosman Newport condominium on four occasions, valued at \$7,000, while Flaherty was, recently had been, or soon would be in a position to take official actions which could affect Cataldo and/or Gosman, Flaherty accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so, Flaherty violated §3(b).^{9/10/}

B. The Cotuit House

46. By, in 1990, accepting the use of the Cotuit house from Murphy and Goldberg, which use was valued at no less than \$2,775, while Flaherty was, recently had been, or soon would be in a position to take official actions which could affect Goldberg and/or other Murphy clients, Flaherty accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so, Flaherty violated §3(b).^{11/}

C. The Kennebunkport Holidays

47. By accepting the 1990, 1991 and 1992 Kennebunkport July 4th holidays, valued at no less than \$2,000, while Flaherty was, recently had been, or soon would be in a position to take official actions which could affect Doran, O’Sullivan, AIM and/or The Choate Group, Flaherty accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so, Flaherty violated §3(b).^{12/ 13/}

D. The Mashpee House

48. By, in 1991, accepting the use of the Mashpee house from Doran on two occasions, valued at \$700, while Flaherty was, recently had been, or soon would be in a position to take official actions which could affect Doran, Flaherty accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so, Flaherty violated §3(b).^{14/}

E. The Martha's Vineyard Condominium

49. By, in 1991, accepting the use of the Cashman Martha's Vineyard condominium, valued at \$700, while Flaherty was, recently had been, or soon would be in a position to take official actions which could affect Cashman, Flaherty accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so, Flaherty violated §3(b).^{15/}

IX. Conclusion

Friendship is not a defense regarding any of the foregoing gratuities. The existence of a friendship between a public employee and the giver of a gratuity is not a defense to a G.L. c. 268A, §3 violation unless the friendship was the only motive for the gratuity. *In re Flaherty*, 1991 SEC 498. That was not the case here. Flaherty acknowledges that he had no social relationship with Gosman. Although Flaherty was close personal friends with Murphy and Doran and friendly to varying lesser degrees with the other givers, he nevertheless acknowledges that, in each instance described above, he knew that the givers were in considerable part seeking his official goodwill on behalf of themselves or others who had or would have business interests before the House. This conduct violates G.L. c. 268A, §3(b).

The Commission is aware of no evidence that Flaherty took or promised to take any official action concerning any proposed legislation which would affect any of the registered Massachusetts legislative agents or other specific individuals in return for the gratuities as described above.^{16/} However, even if the gratuities were intended only to foster official goodwill and access, they were still impermissible.^{17/}

In view of the foregoing violations of G.L. c. 268A, as well as the fact that Flaherty was sanctioned by the Commission in 1990 for receiving unlawful gratuities in violation of G.L. c. 268A, §3(b), the Commission has determined that the public interest would best be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by Flaherty:

(1) that Flaherty pay to the Commission the total sum of twenty-six thousand dollars (\$26,000) as a civil penalty for violating G.L. c. 268A, §3(b),^{18/} and

(2) that Flaherty waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in any related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 27, 1996

^{1/} The Commission first became aware that Flaherty may have violated G.L. c. 268A and G.L. c. 268B in 1993; however, the Commission chose to defer any investigation of these matters pending an inquiry by the U.S. Attorney's Office, which inquiry is now concluded.

^{2/} *In re Flaherty*, 1991 SEC 498 (\$500 fine and \$150 disgorgement).

^{3/} One of these occasions arises from Flaherty's staying at a vacation home in Cotuit, Massachusetts during a five-week period that a lobbyist and his client rented this home. Although Flaherty made multiple visits to this home, and stayed approximately 21-25 days in August and September, 1990, these visits are here collectively treated as one of the 13 occasions. Although Flaherty and/or his guests stayed at these vacation homes on 62 calendar days, not all such stays involved his remaining overnight.

^{4/} Beginning in or about May 1990, Goldberg and Bremen Ltd. paid a \$2,000 per month retainer for Murphy's lobbying services.

^{5/} As noted above, not all of these days involved overnight stays.

^{6/} The Commission is not aware of any evidence that Murphy lobbied Flaherty regarding Goldberg matters between 1990 and 1992. Murphy did, however, lobby Flaherty regarding some of his other clients' matters during 1991 and 1992.

^{7/} July, 1990, \$500; July, 1991, \$800; and July, 1992, \$700.

^{8/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); EC-COI-93-14.

^{9/} In determining whether the items of substantial value have been given for or because of official acts or acts within one's official responsibility, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Commission Advisory No. 8: Free Passes* (issued May 14, 1985):

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

^{10/} This same conduct also violated G.L. c. 268A, §23(b)(3) which prohibits a public employee from acting in a manner which would cause a reasonable person to conclude that anyone can improperly influence the public employee or unduly enjoy his favor in the performance of his official duty.

^{11/} This conduct also violated G.L. c. 268A, §23(b)(3). In addition, where the gratuities were provided by a legislative agent and exceeded \$100 in a calendar year, their receipt also violated G.L. c. 268B, §6, which prohibits a public employee from knowingly and wilfully accepting from a legislative agent gifts with an aggregate value of \$100 or more in a calendar year.

^{12/} Flaherty has stated that he was unaware that AIM and The Choate Group subsidized the entertainment during the July 4th gatherings. Nothing in §3 requires that the public official know the ultimate source of an illegal gratuity. All that is required is that the public official know that he is receiving the gratuity for or because of official acts or acts within his official responsibility. On the foregoing facts, that could be inferred even if Flaherty did not know the specific identity of the all donors. In any event, here Flaherty knew that the intermediate sources, Doran and O'Sullivan, were prohibited sources, themselves lobbyists.

^{13/} This same conduct also violated G.L. c. 268A, 23(b)(3).

^{14/} This conduct also violated G.L. c. 268A, §23(b)(3) and G.L. c. 268B, §6.

^{15/} This conduct also violated G.L. c. 268A, §'23(b)(3).

^{16/} As discussed in footnote 9, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribery section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no evidence of such a *quid pro quo* between the donors and Flaherty.

^{17/} Flaherty has stated that no legislation was discussed during any of the events at issue in the instant Agreement. However, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free days's outing (a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner), worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors). This rule of law was clearly stated in Flaherty's 1990 Disposition Agreement with the Commission.

^{18/} Because the c. 268A, §23 and c. 268B, §6 violations are based on the same facts as the §3 violations, no additional fine is imposed for those violations.